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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C.

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In re:		NOV 1 4 1996
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AMENDMENT OF SECTION 73.606(b))	MM Docket No. 96-F1 of Secretary (RM-8742)
TABLE OF ALLOTMENTS,)	MM Docket No. 96-F1 of Secret Commission
TV BROADCAST STATIONS.)	(RM-8742)
(WAVERLY, NEW YORK AND ALTOONA,)	` '
PENNSYLVANIA))	
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TO: The Chief, Allocation Branch

PETITION FOR RECONSIDERATION

WSKG Public Telecommunications Council. ("WSKG"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby submits this Petition for Reconsideration of a portion of the Allocations Branch Report and Order in the above-referenced matter, released on September 27, 1996 (the "Order").1/2

In its Order, the Branch granted WSKG's petition to allot UHF Television Channel *57 to Waverly, New York and reserve the channel for noncommercial educational use. The Branch also modified the reference coordinates for vacant and unapplied-for UHF Television Channel *57 at Altoona, Pennsylvania, in order to accommodate the new Waverly allotment.

As shown in the attached Engineering Statement of Bernard R. Segal, P.E., the permissible site zone for the new Waverly allotment is so restrictive that it renders the allotment

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^{1/} This Petition for Reconsideration is timely filed. Public Notice of the <u>Report and Order</u> appeared in the Federal Register on Tuesday, October 15, 1996. The FCC rules specify that Petitions for Reconsideration in rulemaking proceedings are due 30 days after Federal Register publication.

unusable. Therefore, WSKG respectfully requests that the Branch reconsider and modify the reference coordinates for the Altoona allotment, so that new Waverly allotment can be activated and used for the purposes for which the allotment was intended. For the following reasons, WSKG submits that this modification will serve the public interest.

First, circumstances have changed from the time that WSKG sought the Waverly allotment to the time the FCC issued its Report and Order. For example, in its Petition (filed December 11, 1995), WSKG suggested reference coordinates for the Waverly allotment. WSKG further suggested reference coordinates for the vacant Altoona allotment of: 40° 24′ 30″ North Latitude and 78° 31′ 30″ West Longitude. The Allocation Study in the Engineering Statement submitted with WSKG's Petition showed that the proposed Waverly reference coordinates and modified Altoona reference coordinates met all FCC requirements.

When the FCC issued its <u>Notice of Proposed Rulemaking</u> (released February 13, 1996), the staff engineering analysis confirmed that Channel *57 could be allotted to Waverly with a site restriction of 7.6 kilometers (4.7 miles) north to avoid short-spacing to two co-channel stations. This analysis also confirmed modification of the Altoona reference coordinates as proposed by WSKG to a site 16.2 kilometers (10.1 miles) southwest of the original reference coordinates.

Yet, when the FCC released its <u>Report and Order</u>, the FCC allotted the Waverly channel with a site restriction of 5.1 kilometers (3.1 miles) north to avoid short-spacing to a later-filed site modification application for WNYS-TV, Channel 43+, Syracuse, New York. Presumably, in recognition of this restriction, the FCC also modified the reference coordinates for Altoona to: 40° 24′ 01″ North Latitude and 78° 32 ′42 ″West Longitude, which is 18 kilometers (11.2 miles)

southwest of its original reference coordinates. The FCC's site restriction on the Waverly allotment for the protection of WNYS-TV's construction permit eliminated a site that WSKG had earlier identified as available for a new Waverly television facility.

Because the WNYS-TV modification application was filed on January 11, 1996 -subsequent to WSKG's December 11, 1995 Petition -- and because the WNYS-TV restriction
was not reflected in the FCC's Notice of Proposed Rulemaking for the Waverly allotment,
WSKG did not become aware of the substantial impact of the WNYS-TV modification on the
siting situation for Waverly until the FCC released its Report and Order in this proceeding.

Now, after having performed a thorough analysis of the Waverly permissible siting zone and contacting several site owners adjacent to this zone in preparation for submission of its application for a new TV station at Waverly, New York, WSKG has determined that there is no site fulfilling all FCC requirements that WSKG can obtain and expect to use, from a practical standpoint.

Second, WSKG submits that a further restriction on the vacant and unapplied-for Altoona allotment will have little or no impact on the future use of that allotment. For example, as shown in the attached Engineering Statement, the Altoona allotment would still be usable at the modified coordinates now suggested by WSKG. More importantly, however, in the Sixth Further Notice of Proposed Rulemaking, FCC 96-317, released August 14, 1996, the FCC set a deadline of September 20, 1996 for applications for all remaining vacant TV allotments. Based on a thorough search of FCC records and inquiries to FCC staff, WSKG believes that no party filed an application for the Channel *57 allotment at Altoona. Thus, based on the FCC's proposal in the Sixth Further Notice of Proposed Rulemaking, the vacant Channel *57 allotment

at Altoona can no longer be applied for, will eventually be deleted and any effect from a further site restriction is, or would soon become, moot.

Finally, as set forth in detail on the attached Engineering Statement, the permissible site zone for Waverly is unusable. Thus, unless the FCC further revises the Altoona reference coordinates, the Waverly allotment may never be activated for the purposes for which it was intended and WSKG, as the proponent of the allotment, will not be able to achieve the result that motivated its Petition in the first place.

For these reasons, WSKG respectfully requests that the Bureau reconsider its decision and further modify the reference coordinates for the vacant and unapplied-for allotment for UHF Television Channel *57, Altoona, Pennsylvania so that the new Waverly allotment can be used for the purposes for which the allotment was intended.

Respectfully submitted,

WSKG PUBLIC TELECOMMUNICATIONS COUNCIL

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November 14, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Petition for Reconsideration" was served this 14th day of November, 1996, by first class United States mail, postage prepaid, upon the following:

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ENGINEERING STATEMENT IN SUPPORT OF PETITION FOR RECONSIDERATION MM DOCKET NUMBER 96-11, RM-8742 WAVERLY, NEW YORK AND ALTOONA, PENNSYLVANIA

The instant engineering statement has been prepared on behalf of WSKG Public Telecommunications Council (hereafter, WSKG), the petitioner in MM Docket Number 96-11 for the allotment of channel *57 to Waverly, New York, with a concomitant modification of the reference coordinates for the channel *57 allotment at Altoona, Pennsylvania.

The Report and Order, adopted September 20, 1996, and released September 27, 1996, specified reference coordinates for Waverly at 42° 03′ 20″ NL, 76° 32′ 05″ WL, and reference coordinates for the Altoona channel *57 unused and unapplied for allotment were specified as 40° 24′ 01″ NL, 78° 32′ 42″ WL.

The geographic coordinates in the Report and Order for the Altoona channel *57 allotment were modified from the original coordinates suggested in

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WSKG's Petition to accommodate the site of a subsequently filed construction permit for station WNYS-TV, channel 43+, Syracuse, New York, in BPCT-960111KK. The revision eliminated use of a site that WSKG had earlier identified as available for a new Waverly facility. WSKG now seeks reconsideration of the Report and Order to specify different reference coordinates for the Altoona, channel *57 allotment to permit use of a site that can fulfill all FCC requirements.

The accompanying map, Figure 1, shows the permissible site zone for the Waverly allotment when all allocation factors are taken into account. The permissible site zone area is approximately one square kilometer and includes low-lying and very steeply sloping land. A terrain barrier stands between the permissible zone and Waverly. The undersigned has estimated that in order to avoid a terrain obstruction to a substantial portion of Waverly from the best possible location within the permissible site zone, which happens to correspond to the reference specified for the allotment, would require a tower in excess of 1000 feet above ground level.

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As a practical matter, the allotment is unusable because of the severe constraints imposed by the terrain and the nonexistence of suitable sites. The only place within the permissible site zone where the land is flat enough to permit guying of a modest height (under 500 feet) tower is in the low-lying area abutting Cayuta Creek where the ground elevation is approximately 900 feet above mean sea level. However, with hills in excess of 1350 feet above mean sea level between that low-lying area and Waverly, which itself is at a relatively low elevation of approximately 900 feet above mean sea level at the foot of the 1350-foot high hills, a tower approaching 1500 feet above ground level would be needed to avoid excessive terrain obstruction to the community of license (Waverly).¹

¹ It would take a much higher tower to avoid terrain obstruction to the entire community. A 1500-foot high structure would permit unobstructed coverage of approximately 80% of Waverly. A rectangular parcel to accommodate the outermost guy anchors for a 1500-foot high tower on the typical assumption that the guys extend outward in three uniformly spaced directions from the tower base for a distance equal to 70% of the tower height, would have long sides of approximately 1850 feet and short sides of approximately 1600 feet. The foregoing allows for a small clearance around each guy anchor. By reference to the map scale of Figure 1, it is readily apparent that the permissible site zone is inadequate to accommodate such a tower, even disregarding the exorbitant cost of erecting such a high tower for a community as small as Waverly.

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A change in the reference for the Altoona channel *57 allotment to a location 10.5 kilometers south of the site that was specified in the Report and Order would expand the Waverly permissible site location zone to include naturally high elevations that would then allow a practical height tower to be employed for the Waverly allotment while yet permitting a viable facility to be specified for Altoona by any future applicant for that allotment.²

Figure 2 shows the proposed reference for Altoona and its juxtaposition to the community. The suggested Altoona reference site at geographic coordinates 40° 18′ 22″ NL, 78° 33′ 14″ WL is at an elevation of almost 2800 feet above mean sea level. That location would permit line of sight transmission paths to the principal community with the use of only a modest height tower (approximately 200 feet). Other equally high elevations that would afford unobstructed paths to Altoona are in the same general vicinity as the site

² The FCC proposes to delete unused allotments in the ATV rule making, MM Docket No. 87-268. A September 20, 1996, deadline was imposed for the submission of applications for construction permit. No applications for the Altoona channel *57 allotment were submitted by the deadline date. Thus, if the proposal to delete unused allotments is adopted, the Altoona channel *57 constraint impacting on the Waverly channel *57 allotment would disappear.

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suggested as a new reference for the Altoona channel *57 allotment. All allocation spacing requirements for channel *57 are fulfilled from the proposed new Altoona reference.

WSKG, already, has targeted and contacted the owners of several locations within the Waverly enlarged permissible site zone that are closest to the current permissible zone. WSKG is making diligent good faith attempts to secure reasonable assurance of site availability in this zone and additional prospects are available in the proposed enlarged site zone and efforts to secure a site are underway with the property owners. It is believed that with the expanded permissible site zone that would accompany the change in the Altoona reference, the search for a site that would permit fulfillment of all FCC requirements will end successfully.

In summary, a change in the Altoona *57 allotment reference, as requested, would make use of the Waverly channel *57 allotment practical and fulfill the purpose for which the allotment was made.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on November 14, 1996.

Bernard R. Segal, P.E.





